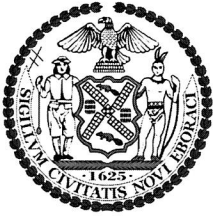


EXHIBIT K



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January 11, 2023

VIA ELECTRONIC & REGULAR MAIL

Robert Kerrigan, Esq.
Kelly, Grossman & Kerrigan, LLP
1248 Montauk Highway
West Islip, NY 11795

Re: O'Hara v. City of New York, et al.
E.D.N.Y. docket no. 17-cv-4766
PRODUCTION AS PER DECEMBER 21, 2022, DISCUSSION

Dear Mr. Kerrigan,

As you are aware, I am the Assistant District Attorney representing the Kings County District Attorney ("KCDA") in this matter. Please accept this correspondence as the latest communication in our continuing discussions concerning nonparty discovery and document productions from this Office.

First, we acknowledge receipt of your letter, dated December 27, 2022, in which you provide an index of the records in your possession as well as proposed email search terms for our Office. In response, we agreed to: 1) provide a revised privilege log for the Conviction Review Unit memo between Mark Hale and the District Attorney; 2) search for the six records identified in your motion to compel; and 3) address the search terms set forth in your correspondence. To that end, attached please find the following:

- 1) A revised privilege log that more specifically addresses the redactions made in the KCDA's Conviction Review Unit memo between Mark Hale and the District Attorney.**

The revised privilege log addresses each redaction therein, separately, for clarity.

- 2) The six records first identified in Plaintiff's motion to compel [cm/ecf doc# 131].**

The KCDA was able to locate five out of the six records requested. Specifically, and upon information and belief, our Office was able to locate: 1) the complaint by then Assemblyman James Brennan to the New York State Board of Elections; 2) the "Confidential Memorandum" from Jeffrey Wait to the commissioners of the State Board of Elections; 3) Investigator Owens' interview notes of James F. Brennan; 4) the affirmation of Jeffrey D. Wait dated January 27, 1996; and 5) the affirmation of John P. O'Mara, dated July 28, 1996.

Our Office has not been able to locate the purported "motion" filed by "Wait and the Board of Elections to unseal the trial transcript of the 1994 civil election case against O'Hara. . . ."

Kings County District Attorney's Office
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It is further noted that the KCDA will withhold the affirmation of John P. O'Mara as it was filed as part of a grand jury investigation and, as such, it is secret and may not be disclosed. CPL § 190.25.

3) The KCDA agrees to a limited number of terms to search electronically stored information ("ESI").

Plaintiff has provided the KCDA with seventy-eight (78) separate search terms plus emails to and from "Charles Hynes, John O'Mara, John Carroll, James Brennan, Allen Presser, Mark Hale, Dino Amoroso, Angelo Morelli, John Keefe, Jeffrey Wait, Monique Ferrell, Anne Swern and Anne Gutman." Moreover, the time period you seek for your search spans more than twenty-three (23) years.

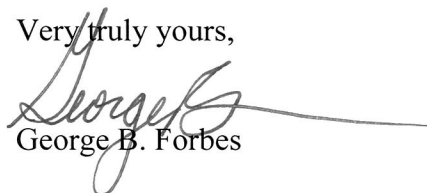
The search terms and temporal scope of your request are not narrowly tailored to the specific causes of action in the complaint and, therefore, are not reasonably calculated, or sufficiently targeted, to lead to the discovery of relevant evidence without an undue burden being placed upon the non-party KCDA. Fed. R. Civ. P. 45(d)(3)(A)(iv); see also Lynch v. City of New York, 2021 WL 4652305, at *2 (S.D.N.Y., Oct. 5, 2021) (holding that "burden and expense are to be weighted more heavily when discovery is sought from non-parties.").

The KCDA will run searches for communications between the defendants named in Count One of your Complaint (the "conspiracy" cause of action) until December 31, 2013.¹ Moreover, the KCDA will run email searches (without date restrictions) for the following names: 1) Brendan Gill; 2) James McCall; 3) Vicki Guveiyian; 4) Magaly Lucas; 5) Ralph Munoz; 6) Roberto Lozano; 7) Quetzal Martinez; and 8) Josephine Vales.

It is anticipated that this initial search will take several weeks to produce records, and additional time will be needed to review the records located before production. We will seek to shift costs for any further searches beyond this initial set, however, we are willing to discuss follow-up searches in an extraordinary circumstance. Finally, we will also seek to shift costs in the event that old emails are not reasonably accessible (i.e. because they are stored in backup tapes or other backup media). Fed. R. Civ. P. 45(d)(3)(C)(ii).

If you have any questions, or wish to discuss this matter further, please do not hesitate to contact me at the number above.

Very truly yours,



George B. Forbes

cc: Dennis J. Kelly, Esq.
Susan P. Scharfstein, Esq.
Mirel Fisch, Esq.
Anthony M. Grandinette, Esq.

¹ As we noted in our discussion, upon information and belief, the KCDA was not using electronic mail in the mid-90's. Moreover, and upon information and belief, KCDA email records may only go back to the early to mid-2000's (approximately 20 years).